

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**STATE OF TENNESSEE v. WILLIAM GLENN ROGERS**

**Circuit Court for Montgomery County  
No. 38939**

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**No. M2002-01798-CCA-R3-DD - Filed August 27, 2004**

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**ORDER**

The defendant has filed a petition to rehear regarding our review and assessment of the trial court's precluding the defendant from cross-examining the victim's brother regarding his purported sexual activity with the victim. The defendant essentially disagrees with our comment that the factual premise to the defendant's argument, namely, that the brother had sex with the victim, is largely unsubstantiated by the record. He also asserts that we should order the record supplemented with the psychological and juvenile court records for the brother if we deem them necessary for proper resolution of the issue. Although not addressing the defendant's claim that the record contains appropriate evidence, the state responds that the circumstances do not justify our allowing supplementation of the record at this time.

In the opinion, we stated the following:

At this point, we must note that the factual premise to the defendant's argument is largely unsubstantiated by the record. Defense counsel told the court that records existed showing that Jeremy Beard told others that his father taught him to have sex with the victim. Reference was particularly made to one record apparently indicating that he had told his mother, who, in turn, had told his counselor. However, the records are not in the record on appeal. Also, as noted, Jeremy Beard was questioned about his telling others about such offense, but he said he did not remember doing so. However, he was not asked if he, in fact, ever had sex with the victim and, if so, when. Moreover, his mother was never asked if her son had told her that he had had sex with the victim. Thus, the defendant's proffer of evidence and the record before us show almost no support for the defendant's claims about Jeremy Beard's past conduct.

The defendant claims that the victim's mother was asked if her son had told her that his natural father had taught him how to have sex with the victim, to which she replied, "Yes, he – Jeremy has told me that one time." The defendant also points out that defense counsel and the

prosecutor referred to a FHC document which contained a reference to Jeremy Beard having been taught to have sex with the victim by his biological father, who was supposed to have watched while it occurred.

Although the record reflects that counsel actually asked the victim's mother if she had ever told any therapist or social worker that her son claimed that his father had taught him how to have sex with his sister, we acknowledge that her response reasonably conveys the fact of interest to the defendant—that her son told her one time and that she relayed that to a person treating him. We still believe, though, that the relevance of the evidence was quite tenuous and that no prejudice resulted from its exclusion.

As for counsel's references to a FHC document which is not in the record, we note that statements of counsel do not usually constitute evidence. See State v. Electroplating, Inc., 990 S.W.2d 211, 224 (Tenn. Crim. App. 1998). Relative to the defendant's request to supplement the record, we are constrained by previous opinions that conclude that "supplementation of the record does not constitute a meritorious ground for a rehearing pursuant to Rule 39(a), Tenn. R. App. P." State v. Roberts, 755 S.W.2d 833, 838 (Tenn. Crim. App. 1988); see also State v. Locke, 771 S.W.2d 132, 140 (Tenn. Crim. App. 1988). In any event, our view of the tenuous relevance of the evidence the defendant claims exists leads us to believe that supplementing the record is not merited.

Wherefore, in consideration of the foregoing, it is hereby **ORDERED** that the petition to rehear is **DENIED**.

PER CURIAM  
(Tipton, Witt, Williams, JJ.)